IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 96

PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC., *et al.*,
Respondents.

REPLY BRIEF FOR PETITIONER IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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Respondents make no effective answer to the points stated in our Petition for Certiorari and Supporting Brief.

OPINIONS BELOW.

As stated in our original Supporting Brief, under the heading "Opinions Below" (P. 22), the opinion of the Supreme Court of Puerto Rico, July 26, 1940 (R. 120-127), is not yet officially reported.

But the opinion of the Circuit Court of Appeals, March 31, 1941 (R. 170-182), is now reported in 118 F. (2d) 752 (Advance Sheets, May 19, 1941).

FIRST

The insular Supreme Court was clearly right in holding that Article VI, "Dissolution", Sections 26-33, of the Private Corporations Law of Puerto Rico has no reference to the forfeiture of corporate charters in *quo warranto* proceedings. (*Supporting Brief, Point I*, pp. 24-25).

A. Respondents make no direct answer to this point. They make no attempt to reply to the analysis of the insular statutes contained in our statement of the "Petitioner's Position", "Third", "A-H" inclusive (pp. 14-18), in our Petition for Certiorari. Our analysis, there, follows along similar lines to those of the opinion of the insular Supreme Court (R. 124-126), and of the reasoning of the Texas court in *San Antonio Gas Co.* v. *State*, 22 Texas Civ. App. 118, 54 S. W. 289, 293, 294, quoted by the insular Supreme Court (R. 125-126), and cited by us (*Petition for Certiorari, notes* 8 and 10, pp. 15, 16). Respondents say nothing to shake this reasoning. It is plainly correct; and conclusive. At the very least it certainly is not "patently erroneous", nor "inescapably wrong" (*Sancho Bonet, Treasurer* v. *Texas Company*, 308 U. S. 463, 471; *Same* v. *Yabucoa Sugar Co.*, 306 U. S. 505, 509-511); whence it follows that the Circuit Court of Appeals was in error in disturbing this ruling of the insular Supreme Court.

B. As stated, respondents attempt no direct answer to this point. All that they do is to invite attention to the fact that, *in a general way* (*Brief*, pp. 13-14), the provisions of Article VI of the Corporation Law of Puerto Rico entitled "*Dissolution*" which contains Sections 27, 28, and 29,[1]

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[1] But which also contains, significantly, as pointed out in our Petition for Certiorari (pp. 14-17, *supra*), *Section 26*; and also is to be read in connection with the provisions made in Section 182 of the Code of Civil Procedure of Puerto Rico (*Petition for Certiorari, Appendix*, pp. 40-43, 46-47).

are analogous to the statutes of many States intended to provide a mode of disposition for the assets of an expired corporation, in order to avoid the escheat to the State which would otherwise follow under the strict provisions of the ancient common law. We have, of course, no quarrel with that general proposition. The statutes of Puerto Rico, taken all together, including the provisions in Article VI, "Dissolution", of the Corporation Law, taken together with those of Section 182 of the Code of Civil Procedure, serve that purpose.

C. Counsel assert broadly (*Brief*, p. 14):

> "'The unqualified term 'dissolution' in such statutes has been held in all but one jurisdiction (Texas) to include dissolutions resulting from forfeiture of the corporate franchise."

Counsel, however, cite no authorities in support of this broad assertion. The trouble with it is, plainly, that the phraseology of the statutes of the various States is widely variant. In Texas, for example, as in Puerto Rico, the term "dissolution" is NOT "unqualified" (to use respondents' phrase); but, on the contrary, is directly qualified by the express provision of Section 26,—the very first section of the chapter on "Dissolution" in the Corporation Law,—by limiting it, as the insular Supreme Court pointed out [and as we point out in our Petition for Certiorari, pp. 14-17, *supra*], to those cases where the "dissolution" is effected by formal meetings of the directors and the stockholders, and is the result of the initiative of the directors. Such a "*dissolution*" quite clearly does not include either of the other categories by which the existence of a corporation may be terminated, which are mentioned in other sections of the law; *viz.*, in Sections 27 *et seq.* of the Corporation Law and in Section 182 of the Code of Civil Procedure; that is to say, by: (a) Expiration through limitation of time contained in the articles of corporation; (b) Annulment

by the Legislature; or (c) Where the corporation "has forfeited its corporate rights". In cases "(a)" and "(b)",—as well as in cases of voluntary "dissolution" under Section 26,—the corporation is continued in existence for certain limited purposes by Section 27 of the Corporation Act (*Appendix to Petition for Certiorari*, p. 41).

But, quite to the contrary, no such provision is made for the case where it "has forfeited its corporate rights". In such a case, by the express provision of paragraph 4 of Section 182 of the Code of Civil Procedure (Appendix, *ibid*, p. 46), a situatoin has arisen where, under the provisions of the first general clause of that section,

> "A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof".

D. There is nothing contradictory between those provisions of the Corporation Law and of the Code of Civil Procedure. They cover different situations. Neither interferes with the other.[2]

E. This is all in perfect harmony with the general purpose of the many State statutes to which respondents refer (*Brief*, pp. 13-14, *supra*), to provide a method for the dis-

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[2] *Confer*, further, as to this,—and as to the necessarily implied limitation of the meaning of the word "dissolution", as used in Section 27 and the following sections of the Corporation Law, by its use by the Legislature in the immediately preceding Section 26, the first section of the chapter; *Petition for Certiorari*, pp. 14-17, and notes 8 and 9, p. 15.

But, illustrating the wide variations in State statutes, in California, for example, to the exact contrary, the corresponding section expressly extends the corporate life, for limited purposes in winding up, of: "All corporations, whether they expire by their own limitation, *by forfeiture of existence by order of court*, or are otherwise dissolved" (Civil Code, Sec. 399; Deering's Codes, 1931. *Italics supplied*). The difference is apparent.

tribution of the assets of a corporation whose life has been terminated, and thus to avoid the escheat of its property to the State under the ancient common law rule. *But there is no requirement that the Legislature provide but one single method* by which all assets, in every case of termination of the corporate life for any reason, must necessarily go in one single way. Plainly, the Legislature had the right to provide more than one method to fit different situations; as it did here by providing for the limited continuance of the corporate life in ordinary classes of cases,[3] under the guardianship of its former directors as liquidating trustees, but by providing, differently, for the appointment of a receiver to liquidate the assets, in cases where the corporation has been adjudged guilty of such acts that it "has forfeited its corporate rights",—and excluding the directors from the management in such cases.[4] The reasons which might move the Legislature to make such a distinction are not far to seek. No question has been suggested as to the distinction being within the legislative power.

F. The question here is, of course, not as to what other legislatures may have done, or as to the effect of other State statutes, or as to any trend of legislation generally in the different States; but is, on the contrary, specifically *just what did the Legislature of Puerto Rico do.* As the Supreme Court of Illinois said in one of the cases cited by the respondents themselves (*Brief*, p. 14), the case of *Evans v. Illinois Surety Co.*, 298 Ill. 101, 105, quoting the opinion of this Court, by MR. JUSTICE HOLMES, in *Filene Sons Co. v. Weed*, 245 U. S. 597, 601-602:

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[3] Subject of course to the interposition of a court of equity and the appointment of a receiver whenever the need for it might be indicated in accordance with the established usages of equity.

[4] Unless of course, in any particular case, the court should see fit to appoint the directors, or one or more of them, as its receivers.

"When a statutory system is administered, the only question for the courts is what the statutes prescribe".

G. At the very least, the insular Supreme Court's construction of Puerto Rico's own local statutes in this regard is surely not so "patently erroneous" nor so "inescapably wrong" as to warrant its reversal by the Circuit Court of Appeals.

SECOND

It follows, necessarily, that neither the former directors nor the so-called "liquidating trustees" had any authority to hold or to administer assets of the corporation, after the mandate of this Court was received by the insular Supreme Court on May 13, 1940, affirming that court's judgment of forfeiture and cancellation of the corporate rights.

The corporate assets had to be administered. It became the express duty of the insular Supreme Court, before which the case was pending, to administer them through its receiver. (Paragraph 4, Section 182, Code of Civil Procedure, *supra*). There was no other method.

THIRD

Both paragraphs 4 and 5 of Section 182 of the Code of Civil Procedure of Puerto Rico (and also sub-paragraphs 2 and 3) are applicable.

A. The first (general) clause of Section 182, together with the pertinent portions of sub-paragraphs 2, 3, 4, and 5,[5] read:

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

"1. In an action * * *.

"2. After judgment, to carry the judgment into effect.

[5] Appendix to Petition for Certiorari, pp. 46-47.

"3. After judgment, to dispose of the property according to the judgment, or to preserve it * * *.

"4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

"5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity."

B. Clearly, under these statutory provisions it was the duty of the insular Supreme Court, before which the case was pending, to appoint a receiver not only because of the need to administer the assets of the corporation because it had been adjudged that it "has forfeited its corporate rights" [*sub-par.* 4]; but also to "carry the judgment into effect" [*sub-par.* 2], that is, to carry it into effect, including its concomitant statutory option secured to the People of Puerto Rico upon the entry of the judgment, by Act No. 47 of 1935; and "to dispose of the property according to the judgment or to preserve it during the pendency of an appeal" [*sub-par.* 3].

And it was also the court's duty, specifically, "by the usages of courts of equity" [*sub-par.* 5], to appoint the receiver in view of the *abdication of their trust* by the directors (or by them in the guise of so-called "liquidating trustees") in attempting to convey the property away to themselves, ostensibly free from the obligations of their trust and free from the statutory option secured to the People by Act No. 47 of 1935,—as pointed out in our original Petition for Certiorari and Supporting Brief (pp. 18-19 and 26-27).

FOURTH

Respondents' attempt to cloud the power of the court under Section 182 of the Code of Civil Procedure is wholly ineffective.

A. Respondents attempt to escape from the power of the insular Supreme Court to appoint a receiver under Section 182 of the Code of Civil Procedure of Puerto Rico, and par-

ticularly from the general power under sub-paragraph 5 of that section to appoint a receiver:

> "5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity",

by asserting (*Brief* pp. 15-16) that paragraphs 4 and 5 of Section 182 of the Puerto Rico Code of Civil Procedure:

> "are identical with paragraphs 5 and 7 of Section 564 of the Code of Civil Procedure of California",

and, that therefore, they do not authorize "the appointment of a receiver after judgment". Respondents cite California authorities construing the California code.

B. *The trouble with respondents' argument is that they are mistaken in their premise.* These sub-paragraphs of the Puerto Rico Code, as well as the corresponding sub-paragraphs of the California Code, are, manifestly, each to be construed in connection with the general clauses at the headings of the respective sections of which they are parts, in their respective codes. While it may be true that, simply taking these sub-paragraphs by themselves and disconnected from the headings of the respective sections in the respective codes, the wording of the sub-paragraphs themselves may be identical in the two codes; nevertheless, *the headings of the sections in the two codes are markedly different.*

Manifestly, the Puerto Rico Legislature in enacting its Code of Civil Procedure was, in a general way, following the California Code as a model. *But it was not slavishly copying it.* It changed it where the Puerto Rican Legislature thought best. This Section 182 furnishes a marked example of such a change. The heading clause of Section 564 of the California Code read:

> "A receiver may be appointed by the court in which an action is pending, or by the judge thereof" (*Code*

of Civil Procedure of California, Section 564; Deering's Codes, 1931; same as originally enacted, March 11, 1872).

It will be observed that under that general heading of the section, as it stood in the California code, there was *no provision for appointment of a receiver after a case had passed to judgment*. Under that California provision, therefore, the only instances in which a receiver could be appointed after judgment, under that section, were those specifically covered by subparagraphs 2 and 3. Those two subparagraphs, like the corresponding subparagraphs 2 and 3 of the Puerto Rico Code, expressly provided for appointment of receivers "after judgment". But under the language of the general heading at the top of the section, providing only for power to appoint receivers by a court "*in which an action is pending*", it was necessarily held by the California courts that no power was given by that section to appoint receivers after the action had been terminated, in any other cases than those expressly covered by such subparagraphs 2 and 3 of the section.

That was the holding, for example, in the case of *Havemeyer* v. *Superior Court*, 84 Cal. 327, 24 Pac. 121, upon which respondents here rely (*Brief*, p. 14),[6] and in other cases cited in 22 *California Jurisprudence*, page 451, Sec. 33, upon which respondents likewise rely (*Brief*, p. 16).

C. *But the Legislature of Puerto Rico* in adopting the substance of this Section 564 of the California Code into Section 182 of the Puerto Rico Code, *changed it very significantly*, by inserting in the initial (general) clause of the section the words

"or has passed to judgment",

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[6] The same case which was expressly distinguished by the insular Supreme Court in its opinion in the present case (R. 126) as not in point here. See also *Petition for Certiorari*, p. 17.

so as to make that initial (general) clause of the section read, very differently:

> "A receiver may be appointed by the court in which an action is pending **or has passed to judgment**, or by the judge thereof".

D. It is too clear for argument that this significant change was made by the Puerto Rican Legislature, in adopting this section into the Puerto Rican Code, for the very purpose of broadening the effect of the section, and of getting away from the effect of the California decisions which had construed the California section as not giving power to the California courts to appoint receivers by virtue of it, after the case had passed to judgment; except under sub-paragraphs 2 and 3, expressly relating to cases "after judgment".

E. Nothing can be clearer, therefore, than that **Section 182 of the Puerto Rican Code does, expressly, endow the insular courts with broad power to appoint receivers under each and every one of the sub-paragraphs of the section, both before and after the cause has passed to judgment.** And, therefore, gives the insular Supreme Court full power to make the appointment in the present instance, whether under one or the other of the sub-paragraphs of the section.[7]

FIFTH

In any event, the insular Supreme Court possessed the "inherent power" to appoint a receiver on its own motion to protect the prop-

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[7] And in any event, as the Circuit Court of Appeals expressly holds (R. 179; 118 F. (2d) 752, 758), in the present instance the case is still "pending", after this Court's affirmance of the insular Supreme Court's judgment of dissolution of the corporation. That affirmance did not put an end to the proceedings.

erty and preserve the rights of all the interested parties [including the People of Puerto Rico's statutory option] in accordance with "the usages of courts of equity" under sub-division 5 of Section 182 of the Code of Civil Procedure. (Point I-B, pp. 24-25, of our original Supporting Brief)

Respondents do not attempt to question the soundness of the reasoning of the decisions of the Idaho and Montana courts, under strictly analogous statutes, here cited by us. The court's jurisdiction and power are plain.

SIXTH

The wisdom and necessity of the court's action in appointing a receiver are made plainer by respondents' brief.

A. Respondents do not question what we said (*Petition for Certiorari*, pp. 19-20) as to the **necessity**,—when a receiver was to be appointed at all,—**of the receivership administering and preserving the entire property, as a going concern,** pending its final disposition by the court.

Respondents in fact emphasize this (*Brief*, pp. 7, 17), saying, among other things (p. 17):

> "It was likewise necessary to protect growing crops, to comply with provisions of contracts for advances and other assistance to colonos and for these and other reasons to continue operating the railroad. Furthermore, a paralyzation of factory operations during the grinding season would occasion a loss of many thousand dollars daily by reason of continuing salaries, wages and overheads. The corporation after final judgment forfeiting its franchise and ordering its immediate dissolution, could no longer continue any of these operations."

B. *If the directors had not abdicated their trust by conveying* [or attempting to convey] *the property to themselves*, the court might perhaps well have considered the advisability of appointing the directors themselves, or some of them, to be its receivers; but, manifestly, it could not do

so in view of such abdication and defiance of the court's authority,—done while the motion for a receivership, filed before the former appeal, was still pending undecided,—and done in direct disregard of the statutory option of The People of Puerto Rico.

No question has even been suggested of the receiver chosen by the Court being thoroughly qualified in every way.

C. Respondents' assertion that (*Brief*, p. 16):

> "There was and is no claim that the People of Puerto Rico either owned or had a lien on any of the property of the defendant corporation";

and that the property (*ibid*, p. 16):

> "belonged to the stockholders of the corporation and after the payment of debts of the corporation such property or its proceeds was distributable among the stockholders",

is very plainly mistaken,—or at least is subject to very great qualification. Plainly, the statutory option on the property, given to The People of Puerto Rico by Act No. 47 of 1935, to have the real property of the company either condemned ["confiscated", upon payment of the just price], or sold at public auction, constituted a very distinct and very important "interest" in the property, in the nature either of ownership or of a lien, which took precedence of the rights, certainly, of the stockholders,—and possibly, to some extent at least, of the creditors,[8]— which it was the duty of a court of equity to protect; and which, under the circumstances here, the insular Supreme Court was wholly justified in determining could properly be protected only by the appointment of a receiver.

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[8] To the extent perhaps of requiring the marshalling of assets, in case the personal property should not prove sufficient to pay the creditors in full.

D. It was wholly immaterial that, as respondents suggest (*Brief*, pp. 5, 8), the motion for the receiver, as originally filed on July 30, 1938 (R. 16), apparently relied wholly upon the mandatory provisions of Section 182 of the Code of Civil Procedure, and accordingly stated, as the only ground expressly assigned for the motion, the fact of the judgment entered the same day ordering the dissolution of the respondent corporation and decreeing the forfeiture and cancellation of its corporate license, and that (*ib.*, R. 16):

> "2. Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver";

and that it was not until the filing of the first brief in support of the motion, on July 5, 1940 [after the judgment of dissolution had been affirmed by this Court and the motion for the receiver accordingly called up for disposition in the insular Supreme Court], that The People of Puerto Rico for the first time expressly assigned as one of the grounds for the receivership the need for protecting The People's statutory option on the property resulting, under Act No. 47 of 1935, from the forfeiture of the corporate franchises (*Complainant's Brief in Support of Motion, etc.*, R. 23, 25-27).

The respondent in its elaborate opposition brief before the insular Supreme Court filed the same day, July 5, 1940 (R. 32-58), undertook to answer this ground, along with the other grounds, for the appointment of a receiver, urged by The People of Puerto Rico, *without making any objection at all that this ground had not been assigned formally in the motion*, but only in the written brief; and the insular court, in its opinion, based its decision partly on this ground (R. 120, 122, *et seq.*).

Manifestly, it was too late, afterwards, for the respondents to contend that, as a matter of local pleading and procedure, this ground and all the grounds should have been

formally assigned, either in the original formal motion for the appointment of the receiver, or in some formal amendment to the motion.

In any event, the motion, setting out the existence of the decree of dissolution and forfeiture of the corporation's assets, and asking for the appointment of a receiver, constituted a sufficient pleading to support the appointment, under the provisions of the Puerto Rico Code of Civil Procedure [Sec. 103, sub-pars. 2 and 3; Sec. 122, and Sec. 142], and particularly of Section 142 that:

> "The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect." [*Confer*, Brief for the Petitioner, "Fifth," pp. 52-58, on the former hearing of this case in this court, *People of Puerto Rico* vs. *Rubert Hermanos, Inc.*, No. 582, Oct. Term, 1939; the same counsel appearing then as here].

D. Respondents' assertion that the counsel for The People of Puerto Rico have taken inconsistent positions on the former and in the present hearing, with relation to the method of enforcement of the statutory option given by Act No. 47 of 1935 upon the corporation's real property, upon the forfeiture of its corporate franchises in the *quo warranto proceedings*, is shortly and effectively answered by the Circuit Court of Appeals. That Court says (Opinion; R. 174; 118 F. (2d) 752, 756):

> "Counsel for the insular government persuaded the courts not to pass on this issue by pointing out, correctly enough, that the People had not asked for confiscation or public sale. Obviously this did not estop the People from subsequently moving for a confiscation or public sale, in accordance with the procedure prescribed in Act No. 47. Appellee has not taken inconsistent positions. The contention of appellants to the contrary is without foundation."

SEVENTH

The frequently declared rule of this Court as to the respect to be accorded to the decisions of Territorial courts of last resort interpreting and applying local statutes and local procedure, applies, in its full force, to the FIRST DECISIONS of those courts upon such local questions.

The rule is not limited in its scope to decisions of those courts which are merely repetitions of former decisions on the same question.

A. Respondents here suggest that full weight should not be accorded to the rulings of the Supreme Court of Puerto Rico in this case upon two of the important questions of interpretation of the local statutes which were decided by it here, *viz.*: (1) Its decision that Sections 26, 27, 28, 29, and the following sections of the chapter on "*Dissolution*" of the Private Corporations Law, are not applicable to the administration of the assets of a corporation which has forfeited its corporate rights; and (2) Its decision that, under paragraph 4 of Section 182 of the Code of Civil Procedure of Puerto Rico, the Court has jurisdiction to appoint a receiver for the assets of a corporation which has forfeited its corporate rights:

BECAUSE, as respondents say (*Brief*, p. 11):

> "The decision of the Supreme Court of Puerto Rico upon which the order appointing a receiver was based adjudicated FOR THE FIRST TIME",

upon these two questions of local statutory law.

B. Respondents clearly mean to imply that less respect is to be accorded to the decisions of the insular Supreme Court upon these two questions because it was the *first time* that the Court had had occasion to decide them. *But counsel cite no authorities to support their suggestion of any such implied limitation on the rule of this Court in that regard.*

C. No such limitation, either expressed or implied, is found in any of the repeated statements of the rule by this Court. On the contrary, as was emphatically said in *Sancho Bonet, Treasurer* vs. *Texas Company, supra*, 308 U. S. 463, 470-471:

> "For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong. From *Sweeney* v. *Lomme*, 22 Wall. 208, decided in 1874, to *Bonet* v. *Yabucoa Sugar Co., supra*" [306 U. S. 505, 509-511], "decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy. * * *
>
> "* * * To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear and manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."

D. To say that this rule, thus emphatically and repeatedly stated by this Court, does not apply to *first decisions* by Territorial courts of last resort; but that it is meant to apply only to repetitions by those courts of rulings previously made; would be to say that it means nothing at all; to reduce it to absurdity; to a mere *brutum fulmen*.

That was not the intention of this Court.

CONCLUSION

As stated in the "Conclusion" of our original Supporting Brief here (p. 27) in support of the Petition for Cer-

tiorari, the decision of the insular Supreme Court ordering the appointment of the receiver was right. The Circuit Court of Appeals was in error in disturbing that order made by the insular Supreme Court in the exercise of its discretion and pursuant to its interpretation and application of local Territorial statutes. Certiorari should issue; the judgment of the Circuit Court of Appeals should be reversed in so far as it finds that the receiver was "improvidently" appointed; and the order of the insular Supreme Court appointing the receiver should be affirmed.

Respectfully submitted,

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